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LAND-SUBDIVISION CONTROL
WITH EMPHASIS ON LOCATION AND TIMING

A THESIS

Presented to

the Faculty of the Graduate Division

Georgia Institute of Technology

In Partial Fulfillment

of the Requirements for the Degree

Master of City Planning

By

Reginald Rea Walters

June 1956

LAND-SUBDIVISION CONTROL

WITH EMPHASIS ON LOCATION AND TIMING

APPROVED:

Date Approved by Chairman: 30 May 1956

ACKNOWLEDGMENTS

The author gratefully acknowledges the assistance he has received from his thesis advisors: Malcolm G. Little, Jr., Assistant Professor of City Planning; Howard K. Menhinick, Regents' Professor of City Planning; and Dr. Joseph E. Moore, Professor and Head of the Department of Psychology, Georgia Institute of Technology.

The author also extends thanks to Miss Natelle Isley, Architectural Librarian of the Georgia Institute of Technology, for her help in obtaining reference materials.

Gratitude is extended to Henry Fagin, Planning Director of the Regional Plan Association, Inc., and to Ralph M. Barnes and Richard S. DeTurk of Frederick P. Clark and Associates for their interest in and valuable contribution to the writing of this thesis.

Finally, the author wishes to thank his wife for her continuous encouragement throughout the writing of this thesis and her patience in typing all drafts and this final.

TABLE OF CONTENTS

Page

ACKNOWLEDGMENTS ii

LIST OF CHARTS vi

GLOSSARY OF ABBREVIATIONS vii

CHAPTER

I. INTRODUCTION 1

The Problem
Purpose
Approach
Importance of Regulating Subdivision Activity
Factors Stimulating Subdivision Activity

General Business Conditions and Economic Prosperity of the People
Growth in Population
Extension and Improvement of Transportation Facilities
Land Speculation

Poor design
Inadequate facilities and services
Premature subdivision

History of Subdivision Regulation in the United States
Scope of Present Land-Subdivision Controls
Deficiencies of Present Land-Subdivision Controls

Inequitable Land-Subdivision Design Requirements
Approval of Plats Often Too Time Consuming
Inadequate Extent of Land-Subdivision Jurisdiction
Lack of Effective Regulations Governing Location of Land-Subdivision Development
Lack of Effective Regulations Governing Timing of Land-Subdivision Development

The Need for Regulating the Location and Timing of Land-Subdivision Development

The Costs of Municipal Facilities and Services
The Quality of Community Facilities and Services
Municipal Control Over the Eventual Character of Development

CHAPTER Page

Desirable Balance Among Various Uses of Land
The Promotion and Protection of the Public Welfare and Interest

Summary

II. FACTORS REQUIRING STUDY TO ESTABLISH STANDARDS FOR LOCATION AND TIMING OF LAND-SUBDIVISION DEVELOPMENT . . 19

Demand for Residential Lots
Ability of Community to Furnish Facilities
Suitability of Land for Development

Topographic conditions and availability of public utilities
Proximity to urban services
Relationship to existing and proposed land-uses

Summary

III. LEGISLATION AND COURT DECISIONS AFFECTING LOCATION AND TIMING OF LAND-SUBDIVISION DEVELOPMENT 28

Analysis of State Subdivision Control Legislation

Extent of jurisdiction
Definition of subdivision
Installation of improvements
Recognition of public interest
What constitutes a violation

Evaluation of Legislation
Legal Decisions Affecting Subdivision Control Laws

Purposes of subdivision control
Administrative regulations
Requirements for improvements
Requirements for reservation or dedication of sites for public use
Refusal in public interest and welfare
Extraterritorial control
Controls based on comprehensive planning
Enforcement

Summary

IV. PRESENT AND PROPOSED CONTROLS RELATING TO LOCATION AND TIMING OF LAND-SUBDIVISION DEVELOPMENT 49

Foreign Land Policies
Land Policies in the United States
Existing Subdivision Control Measures

CHAPTER Page

Requirements for the Installation of Improvements
Approval of Plat by Various Agencies
Elimination of the Irresponsible Subdivider
Rating the Plat
Zoning and Subdivision Regulations
Private Control by Credit Extension Agencies

Proposed Methods of Control

Establishment of a Regional Government

Public interest and welfare
Taxation policies
Zones of building priority
Certificate of convenience and necessity
Municipal ownership of land

Problems
Summary

V. RECOMMENDATIONS 73

BIBLIOGRAPHY 78

LIST OF CHARTS

Chart		Page
1.	Extent of Jurisdiction Over Subdivision	30
2.	Definition of a Subdivision	34
3.	Installation and Financing of Improvements	35

GLOSSARY OF ABBREVIATIONS

A. 2d	Atlantic Reporter, Second Series
Atl.	Atlantic Reporter
Conn.	Connecticut; Connecticut Reports
Ky.	Kentucky; Kentucky Reports
Misc.	Miscellaneous
N.E.	Northeastern Reporter
N.E. 2d	Northeastern Reporter, Second Series
N.J.L.	New Jersey Law
N.J. Super.	New Jersey Superior Reports
N.Y.	New York; New York Court of Appeals Reports
N.Y. Supp.	New York Supplement Reporter
N.Y. Supp. 2d	New York Supplement Reporter, Second Series
Ohio St.	Ohio State Reports
S.W. 2d	Southwestern Reporter, Second Series
Sup. Ct.	Supreme Court; Supreme Court Reporter

CHAPTER I

INTRODUCTION

Today many cities are growing at a fantastic rate. Much of the residential growth is taking place in the fringe areas where there is often little or no control over this growth. This often results in scattered developments which are inadequately served by public utilities and services. This condition often works a hardship upon not only the home owner, but also upon the city because the city must make excessive expenditures to supply the needed facilities. In this case the only one who stands to profit is the land subdivider.

The Problem

Karl Belser remarks:

> In my view subdivision is the most important single factor in establishing the community pattern which the planning profession has control over. However, I would like to point out that the control which is being exercised at the present time is of such limited nature as to be concerned only with the internal arrangements of subdivisions themselves. In fact, we know how to subdivide very well. We have spent considerable time during the years that have passed performing miracles in subdivision design. We have not, however, given much thought to where the subdivision was located or to the problem of making available the facilities of urban living. Neither have we thought of the full development of the area and the possibility of over-extending the lines of communication and producing an un-economic community.[1]

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[1] Karl Belser, Problems of Decentralization in Metropolitan Areas, Proceedings of the First Annual University of California Conference on City and Regional Planning (Berkeley, California: Department of City and Regional Planning, 1954), p. 22.

Purpose

This thesis has a two-fold purpose: first, to analyze existing subdivision controls, with emphasis upon location (where to subdivide) and timing (when to subdivide) of new residential development; and second, to recommend possible measures which may be taken by the city to control effectively both of these factors.

Approach

Chapter I discusses the importance of regulating the subdivision of land, the factors prompting subdivision activity, the history of subdivision regulations in the United States, the scope and deficiencies of present controls, and reviews the need for controlling location and timing of development.

Chapter II identifies factors requiring study in order to establish standards for location and timing of land subdivision development.

Chapter III contains a review of the subdivision enabling legislation and court decisions relating to this subject.

Chapter IV is an analysis of existing and proposed controls of location and timing of residential development.

Chapter V presents recommendations for possible solutions to the problem of controlling location and timing of land subdivision development.

Importance of Regulating Subdivision Activity

"In the entire process of city growth, there is no step more critical than the original subdivision of the raw land."[2] The subdivision

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[2]Richard U. Ratcliff, Urban Land Economics (New York, Toronto, London: McGraw Hill Book Company, 1949), p. 415.

of land is done by private subdividers who have aptly been referred to as the city builders. They are the businessmen who take the raw land, superimpose upon it means of circulation and divide it into lots or areas for residences, business, industry, and public uses. These city builders have literally shaped and transformed many parts of our cities into the fine areas they are today, but also many of them have been responsible for the poor and often disgraceful portions of our cities which are a financial burden upon all alike. Much of this can be prevented.

Since the last excessive subdivision boom of the late twenties, cities and professional planners have realized the great importance that land subdivision activities play in the growth and future economy of the city. Since this realization, the regulation of land subdivision and platting, as sanctioned through the various state enabling acts, has assumed a role in planning equal in importance of control to that of its contemporary, zoning. Together these controls form two of the most important "tools" of planning.

Factors Stimulating Subdivision Activity

There are four main factors which influence the rate of land subdivision:

General business conditions and economic prosperity of the people;

Growth in population;

Extension and improvement of transportation facilities;

Land speculation.

General Business Conditions and Economic Prosperity of the People

Good business and economic prosperity stimulate subdivision activity. This is evident by a review of past periods of peak activity and crises in subdivision activity in the larger cities for which we have records. In the cities and metropolitan areas of Cleveland, Chicago, Milwaukee, San Francisco, Toledo, and Detroit, since 1850, there is a marked similarity between periods of economic prosperity of the people and periods of peak activity in land subdivision. Peak activity of land subdivision in these metropolitan areas occurred in the years 1856, 1875, 1891, and 1926. The observation is made that each of these peaks of economic prosperity has been accompanied very closely by excessive subdivision.[3]

Growth in Population

Many cities are experiencing rapid growth associated with location of one or several new industrial plants in the region. Such plants attract many new people having need of housing. When this growth of population is sudden, seemingly reflecting a demand for urban sites, subdivision activity is stimulated. Even though the demand for new sites may be evident, often its extent is not known.

Extension and Improvement of Transportation Facilities

Extension and improvement of transportation facilities often has a profound influence on the rate of subdivision activity in an area (distance from home to work is no longer measured by miles, but by time). The observation was made in Bergen County, New Jersey, that "feverish

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[3]Ernest M. Fisher, "Speculation in Suburban Lands," The American Economic Review, 23, January 1933, p. 153.

speculation" in land took place upon the announcement of the opening of the George Washington Bridge.[4]

Land Speculation

The rate of subdividing until the depression of the thirties had little relationship to the need for urban sites. It was customary for subdividing to anticipate actual utilization by many years. It has long been a basic disability in the building-lot market to fail to keep demand and supply in adjustment. Thus, subdivision activity has swung irregularly from low production to peaks of overproduction and speculation. The climax occurred in the late twenties. Each peak period left in its wake many harmful effects. The harmful effects of land speculation were of three kinds: poor design; inadequate facilities and services; and premature subdivision. Many cities today are still suffering from these effects and will for many years to come.

Poor design.--The speculator's primary interest was to realize maximum profits in the shortest time possible. He usually accomplished this at the sacrifice of a job well done. For example, streets in a subdivision were usually laid out in a gridiron pattern irrespective of topography. This type of layout cost less money to survey than curvalinear streets conforming to the topography and usually provided "neat rectilinear lots." Lots were usually platted in narrow widths to enable a purchaser to buy the number he could afford. Little consideration was given to the orientation of future homes in the subdivision, to land drainage problems or

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[4] Urban Planning and Land Policies, Vol. II of the Supplementary Report of the Urbanism Committee to the National Resources Committee. (Washington: United States Government Printing Office, 1939), p. 218.

natural barriers, to surrounding land uses, or the suitability of the site for uses other than residential.

Inadequate facilities and services.--New residential subdivisions require utilities and improvements such as curbs, gutters, pavement, and sidewalks as well as convenient access to public schools, recreation areas, churches, and shopping facilities. Other essential services include waste collection, police and fire protection, and mail delivery services. In the majority of instances, speculators subdivided land and sold lots, without making provision for essential public services and facilities.

The financial cost to the city or county of supplying such facilities and services was enormous. The bonded indebtedness of local governments became very high. Many cities defaulted in their payments during the economic depression of the thirties. Others are still paying off the long-term loans incurred to supply these services and facilities.

Premature subdivision.--Some indication of the degree and cost of premature subdivision activity is revealed in the figures compiled in 1942 by Robert E. Merriam. He reported that of the 27,183 lots platted from 1888 to 1940 in Redford Township (Detroit), 89.43 per cent were vacant. In Chicago, of 1,222,000 total lots platted up until 1940, 53.66 per cent were vacant. He further commented that the financial costs were enormous. In the Grand Rapids metropolitan region, it was estimated that the investment in unutilized lots as of September, 1931, amounted to a loss to the local governments of approximately $26,000,000 or $150 per inhabitant.[5]

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[5]Robert E. Merriam, The Subdivision of Land (Chicago: American Society of Planning Officials, 1942), p. 1.

These costs reflect the investment of the municipalities in the installation of utilities and the improvement of streets and the high loss to the city on undeveloped and tax delinquent land. Similar costs prevail in other regions scarred by premature subdivision activity.

It was reported that during the Florida land boom of the 1920's there was enough land subdivided to house the entire population of the United States.[6]

History of Subdivision Regulation in the United States

There is no actual recorded date for the beginning of subdivision regulation in this country. Municipal control of land subdivision is not new. Evidences of such controls can be traced back to Colonial times. The purpose of the early laws was quite different from the laws of today. Plats were chiefly reviewed to determine whether adequate engineering data were supplied and to prevent uncertainty with respect to land titles.

Early regulations were simple. They were concerned principally with street alignment, survey requirements, and the placement of monuments. The idea of requiring new subdivisions to conform to a general city plan was almost entirely lacking. Even after the establishment of the first official city planning commissions, beginning with that of Hartford in 1907, limited powers of plat review were still usually exercised by the boards of street commissioners, city engineer, or authorities other than the planning commission.[7]

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[6] Urban Planning and Land Policies, op. cit., p. 218.

[7] Dennis O'Harrow, "Subdivision and Fringe Area Control," The American Journal of Public Health, 44, April 1954, p. 473.

After World War I, two changes occurred. First, the advisory or final authority to review subdivision plats was given to the local planning commission. Second, there was an increasing emphasis on the concept of subdivision review as a device to insure sound standards of land development and to provide for the orderly growth of established communities.

In 1924, Herbert Hoover, then Secretary of Commerce, appointed an advisory committee on city planning and zoning to undertake the preparation of a model city planning enabling act. The results were published in 1928, and a number of states adopted legislation closely patterned after this model, which authorized land subdivision regulation.

As in many instances in history, preventive measures were not considered nor was any action taken until after serious damage had been done.

In 1934, out of 700 official planning boards in the United States, only 269, representing 29 states, had been delegated the power to regulate land subdivisions. In addition, there were 156 boards acting in an advisory capacity to some other municipal department or official having authority in the field of land subdivision.[8]

Therefore, only in the past two decades have a majority of the states passed legislation enabling cities to cope with the land subdivision problem. This accounts in large part for the widespread acceptance and adoption of subdivision regulations by cities and counties within the past decade.

Scope of Present Land-Subdivision Controls

Existing subdivision regulations primarily regulate design and set forth standards for streets and utilities.

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[8]John W. Reps, "Are Our Subdivision Control Laws Adequate?" Journal of the American Institute of Planners, 20, Summer 1954, p. 130.

Typical regulations for the subdivision and platting of land contain the following major sections: definitions; procedures; design standards; required improvements; plats and data; and variances.

The section on definitions includes such terms as "subdivision" (usually as defined by state statute), "boulevard", "parkway", "arterial street", etc.

The section on procedures describes the steps required of a subdivider in submitting his plat to the planning commission, or various agencies mentioned, for approval. This normally includes two steps, preliminary and final approval of the plat.

In most cases the sections on design standards and required improvements take up more than half the printed material in the regulations. The standards include specifications for streets, alleys, easements, blocks, lots, public building sites, and public open spaces. Included as required improvements are usually survey monuments, utility and street improvements, and, in some cases, street trees and street signs. In the majority of cases the subdivider is required to finance all such improvements, exceptions being made only where it is evident that the improvements are intended to serve other areas as well.

The section on plats and data complements that on procedures by outlining the information that must be supplied and setting forth the size of sheet, scale of drawing, and medium required.

The section on variances provides that exceptions will be made in cases of individual hardship resulting from the enforcement of the regulations.

Deficiencies of Present Land-Subdivision Controls

There are five main points of weakness or deficiency in existing subdivision regulations:

Inequitable land-subdivision design requirements;

Approval of plats often too time consuming;

Inadequate extent of land-subdivision jurisdiction;

Lack of effective regulations governing location of land-subdivision development;

Lack of effective regulations governing timing of land-subdivision development.

Inequitable Land-Subdivision Design Requirements

The regulation requiring that the subdivider provide the necessary improvements was an important innovation resulting from the excessive subdivision activity of the twenties. Its purpose was twofold: first, to relieve the city of the risk involved in installing the improvements and then seeking payment through assessments against benefited property; and second, to safeguard against further excessive and premature subdividing by requiring this additional investment of the subdivider.

In the January 1955, Legislative Council Report to the Governor of Wisconsin it was stated:

> Subdividers, attempting to meet state and local requirements for their proposed subdivisions, are equally concerned with the operation of subdivision law. They complain that, sometimes, in the interest of safeguarding the community from undesirable and unnecessary expense, community officials request concessions which are prohibitively expensive or make decisions which are little short of arbitrary.[9]

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[9]"Conclusions and Recommendations of the Judiciary Committee on the Subdivision and Platting of Land," Report of the Wisconsin Legislative Council, Vol. IV (January 1955), p. 8.

It is contended by planners as well as land developers that the requirements for improvements should be based upon actual needs rather than upon an outdated set of standards requiring overdesign to meet all possible situations.

Approval of Plats Often Too Time Consuming

In localities requiring the approval of a plat by many agencies, such as we find in the larger cities and counties, especially in California, there arises from the land developer a plea for expediency. All too often such pleas are justified.

From a study by the author of approximately two hundred subdivision and platting regulations of cities and counties in every state and of all sizes, it was revealed that there is no uniformity in the regulations pertaining to the number and type of agencies responsible for reviewing new plats.

The majority required approval of from two to four agencies. These usually are the city planning commission, the city engineer, the public works department, and the public health department. However, requirements ranged (depending usually upon the size of the city) from a review and approval by one agency (normally the city manager or city engineer) to a review by as many as fourteen separate agencies. For example, in San Bernardino, California, copies of the tentative plat are distributed by the commission to the following departments for review and reports: City Engineering Department; Board of Education; Health Department; Street Department; Police Department; Park Department; Water Department; County Flood Control District; County Planning Commission; Public Utilities Department; the councilman in whose ward the subdivision is located; and

to any contiguous city or cities within a two (2) mile radius of the subdivision.

Subdividers point out that delays often arise in clearing a plat with the planning commission and in obtaining approval from regulatory agencies as mentioned above. Marybeth Branaman reports:

> . . . it appears that the regulations of the various supervisory authorities are not coordinated as between agencies. A requirement under one agency's rule might conflict under those of another. Similarly, two or more agencies may each require the prior approval of the other with the result that the subdivider is at a stalemate.[10]

Inadequate Extent of Land-Subdivision Jurisdiction

Inadequate extent of land subdivision jurisdiction was recognized as a serious shortcoming as early as 1930 at the National Conference on City Planning held at Denver, Colorado, and to date very little has been done to remedy the situation. It was observed that in rural districts, often at some distance from the city, a considerable amount of subdivision activity was taking place. Even at this early date, more than 25 years ago, L. Deming Tilton, Director of Planning, Santa Barbara, California, observed that much of this activity does not come within the jurisdiction of any city planning commission or of any regional planning agency having authority to deal with subdivision.[11]

The fringe of urban development will extend a distance which varies according to the size of the city, the transportation facilities available, topographic conditions, customs, etc. Today, except in a few states,

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[10] Marybeth Branaman, Control of Subdivisions in California (Berkeley, California: University of California, 1953), p. 23.

[11] Planning Problems of Town, City and Region, Papers and Discussions at the Twenty-Second National Conference on City Planning (Philadelphia: William F. Fell Company, 1930), p. 23.

legislation provides for jurisdiction over land subdivision varying from one to six miles beyond the city limits. Growth is not likely, however, to assume a uniform pattern contained within a specified radius. In some cases a jurisdiction of fifteen miles would be inadequate for the exercise of control over the subdivision of land. The problem is a regional one. Attempts to control land subdivision effectively will require an adequate extent of jurisdiction to prevent evasion of regulations and to guard against scattered developments.

Lack of Effective Regulations Governing Location of Land-Subdivision Development

There are no effective regulations governing location of land subdivision developments. The legal tool of zoning (which seeks to protect established and planned land-uses by restricting certain uses to certain areas) is often limited by statute to application within corporate limits even though subdivision controls may extend six miles beyond the city limits. This presents opportunity for approved subdivision activity to take place in any area at random even though such land may not be suitable for residential development or might preferably be developed as an industrial or commerical site.

Recent amendments to subdivision regulations make provision for refusal of a plat if the site is subject to flooding or is swampy or if other soil conditions exist that would be detrimental to human habitation. This is a step in the right direction. The real need, however, is for standards which will determine what land may be subdivided and developed, and not just standards which designate land unsuitable for development.

Lack of Effective Regulations Governing Timing of Land-Subdivision Development

There are no effective controls in use regulating the timing of residential development. Under existing controls the subdivider is given free reign to develop land whenever and wherever he wishes. His decisions to subdivide often do not include serious consideration of facilities and services necessary to a well planned subdivision, such as paved streets, sewer and water lines, schools, shopping, and recreational facilities. The regulation requiring improvements be furnished often results in a substantial expense to the subdivider in situations where public services and facilities are not readily available. Higher costs, however, are no guarantee against poor timing. Standards are needed whereby, in addition to directing the location of new developments, consideration is given to timing, insuring better sequence and, in turn, making possible proper provision of the necessary community services and facilities.

Of the five deficiencies mentioned above, the last two stand out as being problems of an unusually complex nature that require much more research and study than has been conducted to date. Therefore, this thesis will be largely concerned with these two problems as they pertain to residential subdivisions in the endeavor to assist in an earlier development of possible solutions.

The Need for Regulating the Location and Timing of Land-Subdivision Development

There are clearly discernable three questions which must be answered properly by the land developer to insure a continuing sound investment to the developer as well as to the community. These are, <u>when</u> to subdivide,

where to subdivide, and how to subdivide. These questions should be answered in the order listed. The present subdivision control regulations answer very effectively the last of these, how to subdivide, but only in a few cases are attempts made to answer the first two. This is a serious shortcoming that works to the detriment of not only the city and region but to the conscientious land subdivider as well.

There are five important considerations in regulation the location and timing of new subdivision developments. They are:

The costs of municipal facilities and services;

The quality of community facilities and services;

Municipal control over the eventual character of development;

Desirable balance among various uses of land;[12]

The promotion and protection of the public welfare and interest.

The costs of municipal facilities and services

The costs of municipal facilities and services include the provision of efficient police and fire protection, schools, public transportation, streets and highways, utilities, and others. Location and timing will make certain, for example, that linear facilities such as pipes and streets are not extended inefficiently over long distances to serve scattered users, but are extended gradually to serve areas built in phase with a program of expansion for the metropolitan area. Areas developed in this manner will provide efficient means whereby the local government can supply the necessary facilities and services most economically.

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[12]Henry Fagin, "Regulating the Timing of Urban Development," Law and Contemporary Problems, 20, Spring 1955, p. 300-302.

The Quality of Community Facilities and Services

During periods of increased subdivision activity, when new residential units are being added at a faster rate than municipal facilities and services can be expanded, the resulting overloads will most likely cause a decline in the quality of these services. Uncontrolled, this overtaxation of existing facilities may result in seriously substandard levels of water supply, sewage and waste disposal, public-school education, and public recreation facilities. In addition, if the rate of sudden and unanticipated shopping or industrial expansion outstrips the pace of highway improvement, residential streets may be overcrowded by traffic. Therefore, what is needed are controls providing adequate intervals of time for assimilation of these new developments into the community.

Municipal Control Over the Eventual Character of Development

A reason for regulating location and timing is the need to retain municipal control over the eventual character of development. An example will best point out the importance of this point. The desired over-all future town pattern may require intensive development served by public utilities in a valley presently remote from any utility lines. In the absence of control over the location and timing of building activity, the area in question may be the early subject of a substantial amount of low-intensity construction served by individual wells and separate sewage disposal fields. The existence of this type of construction may make it impossible to later convert the valley to the more intensive character required by the future land-use plan. This will be especially true if the valley has developed into high-priced residential or scattered small-scale factories.

Desirable Balance Among Various Uses of Land

It is essential to the economic stability of municipalities which contain large areas of low-value homes that the service costs be offset by tax income from commercial and industrial uses. It is essential in these municipalities that new residential construction be timed in proper relation with business and industrial expansion.

There is a need for control of location and timing on a metropolitan basis. Today many of the satellite communities surrounding larger cities are becoming "dormitory towns." In some instances there may be the tendency to concentrate large developments of low-cost homes in one particular town in the metropolitan area. This will place a great financial burden on the local government which has to provide the necessary services and facilities. Through location and timing this concentration of low-cost housing could be either proportioned to other areas presently able to supply the facilities or slowed down sufficiently for the local government to supply the necessary services and facilities.

The Promotion and Protection of the Public Welfare and Interest

It is the responsibility of the municipal government to afford reasonable protection to its citizens. Many fly-by-night land subdividers and developers are active in every land boom. This type of "city builder" in seeking higher profits usually does not consider factors of location and timing in subdividing for residential purposes. In California it is reported that purchasers of homes in newly developed subdivisions are experiencing the impact of floods, sanitation problems, lack of fire protection, and other hazards. They are not convinced that their legislative representatives have assured them the protection that a home-buyer might

reasonably expect.[13] Some of these faults can be avoided under existing regulations. However, basically the problem stems from the lack of proper authority to regulate the location and timing of development.

Summary

Land subdividers have aptly been referred to as "city-builders." Factors stimulating subdivision activity include rise in general business conditions and economic prosperity of the people, growth in population, extension and improvement of transportation facilities, and land speculation. The harmful effects of land speculation are evident in poor design, inadequate facilities and services, and premature subdivision.

Subdivision control is one of the most important "tools" of planning. Municipal control of land subdivision is not new. However, due to inadequate legislation there has been widespread acceptance and adoption of subdivision regulations by cities and counties only within the past decade. The scope of present land subdivision regulations is very limited as they deal effectively only with design. The deficiencies in these existing controls include inequitable design requirements, loss of time in approving a plat, inadequate extent of jurisdiction and lack of effective regulations governing both location and timing of new residential developments.

The reasons for a local government regulating location and timing are to secure economy in the costs of municipal facilities and services, to maintain a high quality of community services and facilities, to retain municipal control over eventual character of development, to maintain a desirable balance among various uses of land and to promote and protect the public welfare and interest.

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[13] Branaman, op. cit., p. 42.

CHAPTER II

FACTORS REQUIRING STUDY TO ESTABLISH STANDARDS FOR LOCATION AND TIMING OF LAND-SUBDIVISION DEVELOPMENT

The control and regulation of the location and timing of new residential subdivisions must be based on reliable data. From these data, standards for location and timing must then be established to serve two purposes: first, to establish criteria on which the planning board can make its decisions; and second, to inform the subdivider of what is expected of him in regard to a particular tract of land which he is considering for development. These standards must be established if the planning agency does not wish to be taken into court for acting in an arbitrary manner.

The criteria which should be used in establishing standards qualifying land for subdivision development can be classified under three main headings:

Demand for residential lots;

Ability of community to furnish facilities;

Suitability of land for development.

Demand for Residential Lots

Essential to directing the location, and especially the timing, of residential development is a thorough understanding of the need and demand for residential lots. The need and demand should be determined not only in view of the total demand for housing, but in terms of the particular type (apartment, duplex, single-family, rental, or purchase) and price range for

which the need exists. To insure a balanced program this information will have to include estimates of both present and future demand based upon the needs of the metropolitan area or region.

Estimates of both long-term and short-term housing needs and demands are not new. They have been used for many purposes. National, state, and local governments use such estimates to forecast future employment and business activity, to determine housing policies, and to anticipate land-use requirements. Public utility companies also use housing estimates to forecast load requirements. A housing market analysis for the area concerned will provide the necessary information on which to base these estimates. The Division of Housing Research of the Federal Housing and Home Finance Agency has done a great deal of study in the field of determining local housing markets.[14] This agency has information available which will indicate the data necessary to determine the effective market demand for housing.

The long-term housing need is also an important factor, but one which is difficult to determine. As pointed out by Paul F. Wendt in "Estimating California's Housing Demand," the estimation of a long-term housing need or demand is a task of immeasurable difficulty and little more than a broad approximation can be hoped for.[15] However, a broad approximation of the long-term housing demand is all that is required. Imposed controls affecting the location and timing of new residential developments

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[14]Housing and Home Finance Agency, How to Make and Use Local Housing Surveys (Washington: United States Government Printing Office, April 1954), p. 5.

[15]Paul F. Wendt, "Estimating California's Housing Demand, 1954-1965," The Appraisal Journal, 22, October 1954, p. 561.

should be flexible and capable of being adjusted and adapted to the existing, short-term, and long-term market needs and demands for housing.

Once the need and effective demand have been determined, for both type and price range, the problem remaining will consist of the location and selection of a site adapted to the market, rather than the oftentimes existing practice of attempting to locate a market adapted to the site.

Ability of Community to Furnish Facilities

This factor is of extreme importance and requires serious study before the establishment of standards which will control location and timing of new developments. The inability of the community to furnish the necessary facilities (when they are not required to be provided by the subdivider) at the rate land is being subdivided brings to light this problem of controlling location and timing of new residential developments. For example, Milford, Connecticut, was experiencing such rapid growth in population that the demand for services was outstripping the ability of the town to finance the necessary service facilities. The town has practically reached the limit of its borrowing capacity, having had to increase its indebtedness to more than $10,000,000 in an effort to cope with its growth. Consequently, Milford is presently attempting to control both location and timing of new residential developments.[16]

Establishing standards based on the community's ability to furnish facilities will require that each agency concerned with location and timing plan for the future expansion of the service for which it is responsible, and establish a budget setting up a rate of expansion. Such planning will

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[16]Frederick P. Clark, "Development Timing," Planning 1955 (Chicago: American Society of Planning Officials, 1956), p. 87-89.

include major streets, utilities, public schools, and parks and recreational areas. Studies conducted by these agencies will reveal their ability to serve new residential construction and will indicate locations in which the subdivision will afford efficient use of the existing and proposed services and facilities. By this means the rate of subdivision activity can be geared to the city's ability to finance the necessary facilities and services.

Suitability of Land for Development

Contrary to a belief embodied in many present and past practices of site improvement, all land is not suitable for sound residential subdivision development. The mere fact that a land subdivider is able to comply with the minimum design standards set forth in the regulations is not a guarantee that the development will be sound.

The Federal Housing Administration's Planning Bulletin of 1941 stresses the point that improper location of a subdivision commonly results from an attempt to find a use for vacant land, instead of the land being selected with a definite residential purpose in mind. Poor location is considered a general cause for the failure of many low-cost developments. Developers too often believe that because land is cheap it is suitable for subdivision and use for low-cost houses without consideration of its location.[17]

There are three considerations which are important in establishing standards governing the location of new residential developments. These are topographic conditions and the availability of public utilities,

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[17]Federal Housing Administration, Land Planning Bulletin No. 1, Successful Subdivisions (Washington: United States Government Printing Office, 1941), p. 7.

proximity to urban services, and relationship to existing and proposed land-uses.

Topographic conditions and the availability of public utilities.--Included under this heading are such factors as flood hazards and drainage, filled ground, slope of the land, water supply, and sewage disposal.

Many cities and counties already realize the importance of prohibiting residential development in areas which are difficult to drain or subject to flooding.

Multiple problems arise in connection with subdivisions developed on filled ground, especially in swamps or areas subject to flooding. The dangers of land settling and erosion are always present. Subdividers often delay in securing adequate ground cover. This is frequently crucial in a filled ground area. Sometimes, even though the planting is done very quickly, the amount provided is insufficient to prevent costly damage.

The slope of the land is a very important factor to be considered because the topography of the area will determine the gradients of the future streets and the location of the homes in relation to these streets. The slope will also indicate the severity of drainage problems and, most important of all, it will determine whether or not it will be economically feasible to sewer the area if a sewerage system is reasonably accessible.

The value of such information in qualifying land for subdivision is of such importance that the preparation of a "slope map" of the region, which would indicate certain limiting gradients by a classification of all land into grades of 0-5 per cent, 6-10 per cent, 11-15 per cent, and 16 per cent and over would be of value. This information could prove

helpful in determining the feasibility of proposed residential subdivisions.[18]

Where there is no public water supply available, water supply constitutes one of the most serious problems in new subdivisions. The availability of water is important both as to quantity and as to quality or potability. Both factors should be examined before land is qualified for development. In arid regions and during dry seasons of the year in other localities, the problem of a dropping water table is critical. Purchasers of platted lots and homes are not always informed that there is no guarantee of a continued water supply. Such areas should be avoided by residential subdivision development entirely until a continuous water supply is available.

The safety of private water and sewage disposal systems is dependent upon the location of rock strata, depth of hardpan, the porosity of the soil and subsoil, and the height of the water table.

Disposal of sewage in areas without public facilities is one of the most troublesome problems encountered in the subdivision of land. Existing control measures have been woefully inadequate. The sewage problem is also tied in with the other important problems of flooding, drainage, and water supply mentioned above. The local ground conditions may serve to make sewage disposal on individual lots either completely unacceptable or extremely difficult and costly to provide.

Due to the seriousness of this factor in qualifying land for subdivision, Mr. Hoover has also suggested that a "soil map" be prepared

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[18]Robert C. Hoover, "Land Planning for Sanitary Drainage and Water Supply in Suburban and Open Country Subdivisions," The Journal of the American Institute of Planners, 17, Winter 1951, p. 33.

through consultation with local builders, engineers, health authorities, agronomists, soil technicians, and staff members of the U. S. Soil Conservation Service, classifying all land in the area as to its suitability for installation of private sewer or water systems.[19]

Proximity to urban services.--As a result of improvements in transportation facilities, an enormous area of buildable land has been made accessible in the past twenty years. Although tremendous areas are ripe for building from the point of view of accessibility, these areas contain large parcels that are not ripe from the point of view of their proximity to urban services. This is an important consideration in any calculation of buildable land in the environs of a city.

The urban services referred to include, in addition to the public utilities, such services as public schools, shopping centers, and accommodations for worship and recreation.

A survey conducted in Milwaukee County in 1948 revealed that the average rural-urban-fringe dweller wants to have a food market, grade school, and drug store reasonably close to home (within walking distance). This survey also indicated that the high school, churches, parks, and motion picture theaters would be close enough if they were within a 1-1/2 mile radius of the residences. In addition to a 100 per cent request for electricity and telephone service, other utilities requested were public transportation, sewerage facilities, garbage and other refuse collection, gas connection, and street lights. Other essential or desirable services

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[19] Loc. cit.

were public water supply, sidewalks, and to-the-door mail services (expressed in order of preference).[20]

Provided there is a market for the housing to be provided, the location of new subdivision developments in proximity to urban services already existing (or proposed in the near future), will insure a sound investment to the developer, to the home owner, and to the city.

Relationship to existing and proposed land-uses.--The importance of controlling land-use relationships which promote a healthy environment in which to live, work, and play has already been established in the planning field. In this respect, there is a noticeable weakness in regional planning controls. The coordination of land-use relationships between local governments in proximity to one another often leaves much to be desired. Often in the preparation of the comprehensive development plan, each local government in concerned with only the areas within its city limits or over which it has legal control. It should be pointed out, however, that the need to consider existing and proposed land-uses in the location of a proposed subdivision development is recognized in most instances.

Summary

It is important that the locality attempting to regulate location and timing do so in an intelligent manner. Precautions should be taken to avoid regulations that are arbitrary or unduly restrictive. The three most important factors requiring study to establish standards of location and timing are: first, the effective demand for residential housing (sites);

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[20]Richard Dewey, "Peripheral Expansion in Milwaukee County," The American Journal of Sociology, 54, September 1948, p. 124.

second, the ability of the community to furnish facilities; and third, suitability of land for development. The latter is dependent upon topographic conditions and the availability of public utilities, proximity to urban services and the relationship to existing and proposed land-uses. The planning agency will be assured that it is acting in an intelligent manner once information concerning these factors has been assembled, analyzed, and reasonable standards established.

CHAPTER III

LEGISLATION AND COURT DECISIONS AFFECTING LOCATION AND TIMING OF LAND-SUBDIVISION DEVELOPMENT

State enabling legislation authorizes the various cities and counties to perform such operations as the regulation of subdivision and spells out the powers granted. It remains for the courts to interpret these powers if they are challenged. A review of both enabling legislation and court decisions is necessary as a background for evaluation of controls presently employed and those proposed to regulate the location and timing of new developments.

Analysis of State Subdivision Control Legislation

The city is the legal creation of the state and therefore must receive authority from the state to regulate land subdivision as well as to perform any other function. The authorization may be contained in a "general enabling act" for municipal planning applicable to all cities and counties in the state or in a "special act" authorizing control over the subdivision of lands only in a specified city or county. The general enabling act is by far the more desirable means of legislation as it provides the needed authority to all local governments within the state.

The purpose of analyzing a state's subdivision enabling legislation is to determine the present degree of authority extended to the municipalities and counties. As these "legal subdivisions" of the state cannot exceed the power granted to them, their honest attempts to regulate land subdivision activities are often thwarted. Proper and sufficient enabling

legislation is a prerequisite to good subdivision control. It should include measures for regulating the location and timing of new developments. Therefore, analysis will be made of existing legislation of the forty-eight states, as of 1953, as it pertains to the following five provisions:[21]

Extent of jurisdiction;

Definition of subdivision;

Installation of improvements;

Recognition of public interest;

What constitutes a violation.

Extent of jurisdiction.--The majority of subdividing activity today is taking place beyond the city limits. There are many reasons for this, a few being improved transportation facilities, more available and cheaper land, and less stringent controls over land development by the county than by the city. The fact remains that, even though this land lies beyond the city limits, it is definitely a part of the metropolitan area and should be included in a regional plan. If both future location and timing of subdivision activity are to be effective, this fact must be recognized. The ability to locate a proposed development beyond the city limits and thereby escape these controls would defeat the entire purpose of the program.

The extent of jurisdiction presently permitted in the various states can best be analyzed by reference to Chart 1, showing "Extent of Jurisdiction Over Subdivision." In only seven states is sufficient authority granted to carry out an effective program of location and timing of development. In situations where the metropolitan area extends into several

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[21] "An Analysis of Subdivision Control Legislation," Indiana Law Journal, 28, Summer 1953, p. 544-586.

Chart 1. Extent of Jurisdiction Over Subdivision**

State	Extent of Jurisdiction (Miles)	State	Extent of Jurisdiction (Miles)
Alabama	5	Michigan	unlimited
Arizona	3	(county planning	
Arkansas	5	commission works	
California	3	with city)	
Colorado	3	Minnesota	3
Connecticut	*	Mississippi	city limits
Delaware (county)	unincorporated area	Missouri (city)	city limits
Florida	*	(county)	unincorporated area
Georgia	*	Montana	city limits
Idaho	city limits	Nebraska	
Illinois	1-1/2	(metropolitan class city)	3
Indiana (city)	2	(primary class city)	contiguous to city limits
Iowa	1		
Kansas (city)	3	(first class city)	city limits
Kentucky	county	Nevada	3
(combined city-county commissions)		New Hampshire	unlimited
		New Jersey	unlimited
Louisiana	city limits	New Mexico (city)	3-5
Maine	city limits	(county)	unincorporated area
Maryland	1	New York	city limits
Massachusetts	city limits	North Carolina	1

*Indicates no mention made in state legislation.

**See "An Analysis of Subdivision Control Legislation," Indiana Law Journal, 28, Summer 1953, p. 574-586.

Chart 1. Extent of Jurisdiction Over Subdivision (Continued)**

State	Extent of Jurisdiction (Miles)	State	Extent of Jurisdiction (Miles)
North Dakota	6	Tennessee (regional planning)	unincorporated area
Ohio	3	Texas	5
Oklahoma		Utah	unlimited
(160,000 population city)	3	Vermont	*
(142-204,000 " ")	5	Virginia (city)	2-5
(244,000 " ")	unincorporated area	(county)	unincorporated area
Oregon	6	Washington (city)	city limits
Pennsylvania		(county)	unincorporated area
(borough)	borough limits	West Virginia	contiguous to city limits
(2 class city)	city limits	Wisconsin	See Statute 236.06 (1951)
(2 class-A city)	city limits	Wyoming (city)	city limits
Rhode Island	no powers evident	(county)	unincorporated area
South Carolina	unincorporated area		
South Dakota	3		

*Indicates no mention made in state legislation.

**See "An Analysis of Subdivision Control Legislation," Indiana Law Journal, 28, Summer 1953, p. 574-586.

counties, these restrictions may prove ineffective where reference is made to jurisdiction in all "unincorporated areas" surrounding the city or to the "county" in which the city is located (as in Kentucky). The better provision, because it is more flexible, is found in the states of Michigan, New Hampshire, New Jersey, and Utah where jurisdiction includes all areas outside the city limits "bearing relation to the city."

Nine states make provision for control from five to six miles beyond the city limits. More than one-fourth of the total states either restrict control to the city limits or make no mention of jurisdiction in their legislation. As is evident, this situation is deplorable.

Definition of subdivision.--Much depends upon the definition of subdivision if complete control over all land subdivision activity is desired. For example, there are many land speculators and developers who desire to subdivide and develop only two or three parcels per year. Subdivision regulations do not apply in the situation where a subdivision, requiring approval, is defined as a parcel which is divided into five or more lots and specifying no time limit within which subdivision can be repeated. If the tract is large and the subdivision of a few lots is allowed to be repeated frequently, after a period of years an extensive land subdivision development may evolve over which the municipality has had no control.

Sixteen of the states prevent this occurrence by defining a subdivision as the division of a parcel of land into two or more lots per year. This would include all subdividing activity. Five states define a subdivision as the division of an area into three or more lots, while five others define it as a division of land into five or more lots. Twenty-two states do not attempt to define a subdivision in their legislation

(Refer to Chart 2. "Definition of a Subdivision"). This indicates a definite shortcoming.

Installation of improvements.--As indicated in Chart 3, "Installation and Financing of Improvements", most states have realized the importance and benefits of permitting the municipality or county to require installation of improvements previous to the acceptance of the subdivision plat. Thirty-two states make some provision in their enabling legislation for requiring installation of improvements by the subdivider. The remaining sixteen states have no such provisions in their enabling legislation. Of these thirty-two states, provision making allowance for receipt of a bond in-lieu-of improvements previous to acceptance of the plat is permitted in twenty-one states, while the remaining eleven states make no provision for such a bond.

Recognition of public interest.--Only eight states, to a limited degree, have included provisions in their legislation whereby the local authority may forbid subdividing which is contrary to the public interest and welfare. Generally this provision recognizes that certain acts by a few, if permitted, will result in an overall harmful effect to the city. The prohibition of such acts (as poor location and timing of subdivision developments) is enforceable through the police power as provided by statute. This legislation, if upheld by the courts, could be the type needed for the establishment of standards whereby effective control of new subdivision developments could be realized.

There is only a slight possibility that in three of these states, (Maine, North Dakota, and West Virginia), the local authority could refuse

Chart 2. Definition of a Subdivision**

A subdivision is defined as the division of land into a designated number of plots or parcels for the purpose of sale or building development. Such number is . . .

State	Number (. . . or more)	State	Number (. . . or more)	State	Number (. . . or more)
Alabama	2	Maine	5	Ohio	*
Arizona	*	Maryland	2	Oklahoma	2
Arkansas	*	Massachusetts	2	Oregon	*
California	5	Michigan	*	Pennsylvania	3
Colorado	2	Minnesota	3	Rhode Island	*
Connecticut	3	Mississippi	*	South Carolina	*
Delaware	2	Missouri	*	South Dakota	2
Florida	*	Montana	*	Tennessee	2
Georgia	*	Nebraska	*	Texas	2
Idaho	*	Nevada	5	Utah	2
Illinois	*	New Hampshire	2	Vermont	*
Indiana	*	New Jersey	2	Virginia	2
Iowa	*	New Mexico	3	Washington	5
Kansas	*	New York	*	West Virginia	*
Kentucky	2	North Carolina	*	Wisconsin	5
Louisiana	2	North Dakota	into lots	Wyoming	3

*Indicates no mention made in state legislation.

**See "An Analysis of Subdivision Control Legislation," Indiana Law Journal, 28, Summer 1953, p. 574-586.

Chart 3. Installation and Financing of Improvements**

A. May installation of improvements be required as a condition precedent to approval?

B. Can a bond be accepted instead?

State	A	B	State	A	B	State	A	B
Alabama	Yes	Yes	Michigan	Yes	Yes	Oklahoma	Yes	Yes
Arizona	*	*	Minnesota	Yes	Yes	Oregon	*	*
Arkansas	Yes	No	Mississippi	*	*	Pennsylvania (2 class city)	Yes	Yes
California	Yes	No	Missouri (county)	Yes	Yes	Rhode Island	*	*
Colorado	*	*	Montana	*	*	South Carolina (cities)	Yes	Yes
Connecticut	Yes	Yes	Nebraska (metropolitan class only)	Grading only	No	South Dakota	Yes	Yes
Delaware	Yes	Yes				Tennessee	Yes	Yes
Florida	*	*				Texas	*	*
Georgia	Yes	No				Utah	*	*
Idaho	*	*				Vermont	*	*
Illinois	*	*	Nevada	Yes	No	Virginia	Yes	Yes
Indiana	Yes	Yes	New Hampshire	Yes	Yes	Washington	*	*
Iowa	Yes	No	New Jersey	Yes	Yes	West Virginia	*	*
Kansas	Yes	No	New Mexico (city)	Yes	Yes	Wisconsin	Grading, paving only	Yes
Kentucky	Yes	No						
Louisiana	Yes	Yes	New York	Yes	Yes	Wyoming	*	*
Maine	Yes	No	North Carolina	*	*			
Maryland	Yes	Yes	North Dakota	Yes	No			
Massachusetts	Yes	Yes	Ohio	Possibly	No			

*Indicates no mention made in state legislation.

**See "An Analysis of Subdivision Control Legislation," Indiana Law Journal, 28, Summer 1953, p. 574-586.

a plat on the basis that it would have a detrimental effect on the community. In Maine, the legislation provides that the planning commission may regulate and restrict the subdivision and development of land where deemed reasonably necessary in the interests of health, safety, or the general welfare.[22]

In North Dakota, the legislation provides that, before approval, the commission is required to consider the prospective development of the area included in the plat and the surrounding territory.[23] In West Virginia, the legislation provides that before the approval is granted, the subdivider must furnish information to the governing authority showing that the proposed subdivision will not impede or prevent further development and extension of the municipality.[24]

In Delaware and New Hampshire, the power to refuse a plat because it would be detrimental to the public interest is somewhat limited. Legislation provides that the planning authority may provide against premature or scattered subdivision which would involve danger to health, safety, or prosperity by reason of lack of water supply, transportation, or other public services or would necessitate an excessive expenditure of funds to supply such services.[25]

The more inclusive provisions are found in the state statutes of Pennsylvania, Wisconsin, and Washington.

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[22] Ibid., p. 578 (Maine, c. 80 S 84, 1944).

[23] Ibid., p. 580 (North Dakota, S 40 - 4822, 1943).

[24] Ibid., p. 584 (West Virginia, S 3962, 1949).

[25] Ibid., p. 575, p. 579 (Delaware c. 266, 1941; New Hampshire c. 53, S 21, 1942).

The Pennsylvania legislation, applying only to second class cities, states that the commission may consider the local conditions of the district affected by the subdivision, the improvements on adjacent land, and the effect of the proposed subdivision on the public welfare, with particular reference to the district of which the proposed subdivision is a part, and shall disapprove any subdivision which would be detrimental to the public welfare.[26]

In Wisconsin, the governing body may regulate, restrict and, in specific areas, prohibit the subdivision of land. Factors to be considered in exercising such powers include: the character of the municipality with a view to conserving the value of buildings placed upon the land; providing the best possible environment for human habitation; and the most appropriate use of land throughout the municipality.[27]

The State of Washington was the first to adopt legislation granting the power to refuse a plat not in the public interest or welfare. Floyd M. Jennings, planning consultant to the Association of Washington Cities, reports that, to the best of his knowledge, even though this legislation was adopted in 1937, it has not been adjudicated in the state. This statute reads:

> It shall be the duty of such city, town, or county authority to inquire into the public use and public interest proposed to be served by the establishment of such a plat . . . and shall also consider all other facts deemed by it relevant and designed to indicate whether or not the public interest will be served or advantaged by such platting.[28]

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[26] Ibid., p. 581 (Pennsylvania, S 9170, Cum. Supp. 1952).

[27] Ibid., p. 584 (Wisconsin, S 236.143, 1951).

[28] Reps, op. cit., p. 131.

What constitutes a violation.--In all but eight states there is some mention made in the legislation as to what constitutes a violation of subdivision regulations, of the penalty for offense, of a prohibition to building upon property in an unapproved subdivision. The states in which there is no mention of these matters are Florida, Idaho, Illinois, Michigan, Mississippi, Rhode Island, Texas, and Vermont. The majority of the others, with a few exceptions, consider it a violation for one to sell, or negotiate to sell, any land within a subdivision by reference to, exhibition of, or by any use of a plat before the plat is approved. Transfer by metes and bounds is not prohibited in many states.

Evaluation of Legislation

It is evident from the analysis of the five points just discussed that subdivision legislation, in general, is still in its infancy and leaves much to be desired. A large number of states still have scanty legislation. Provisions of present legislation, especially those pertaining to the extent of jurisdiction, are too restrictive to be effective. The greatest single deficiency is the absence of a provision granting authority to the local planning agency to refuse a plat not in the public interest or serving the public welfare. If the factors of timing and location of new subdivision developments are ever to be given serious consideration, present enabling legislation will require revision.

In addition to the fact that no state can be assured satisfactory subdivision control without an adequate enabling act, it remains an evident truth that a local program established under a perfect statute can not succeed without a realistic planning authority imbued with the will and necessary knowledge to attain the desired result. There are many cities

who have not even availed themselves of the opportunity to create a planning agency. A survey conducted in 1950, when practically every state had a planning enabling statute in force, revealed that only 50 per cent of all the cities of 10,000 population or over had a planning commission.[29] Therefore, the first step would be to establish a planning agency, then consider controlling location and timing of subdivision.

Even in those communities that have availed themselves of their statutory authority by creating planning commissions, the control program is often ineffective. This can be attributed to three factors: (1) failure to fully employ the statutory powers; (2) loop-holes within the regulations; and (3) the tendency for commissions often to compromise or fail to enforce the program. There are two reasons for this: first, a lack of understanding and belief in the subdivision controls; and second, insufficient funds to hire an adequate planning staff.

Therefore, it becomes increasingly evident that first there must be a competent planning agency with the conviction that location and timing of new subdivisions must be controlled before legislation granting the desired powers will do any good. States will probably not revise their legislation until this need is voiced on the local level and pressure brought upon the legislature.

Legal Decisions Affecting Subdivision Control Laws

The community, in seeking to avoid mistakes of the past, has established subdivision regulations which will continue at times to conflict with the wishes of the landowners. Many times these conflicts are carried

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[29]The International City Manager's Association, The Municipal Yearbook (Ann Arbor, Michigan: Cushing-Malloy, Inc., 1951), p. 264.

to the courts for interpretation and decision. This action firmly establishes certain control practices and renders others of questionable legality. The presentation of the case itself has much to do with the final decision. It is important in a study such as this, concerned with imposing new controls heretofore relatively unused and untried, to review the legal decisions affecting existing subdivision control laws.

Unlike the field of zoning, subdivision control has had comparatively few court decisions. Positive decisions on certain important issues in this field are lacking and must await the outcome of further litigation.

Following will be a brief review of court decisions and interpretations pertaining to: purposes of subdivision control; administrative regulations; requirements for reservation or dedication of sites for public use; refusal in public interest and welfare; extraterritorial control; controls based on comprehensive planning; and enforcement.

Purposes of subdivision control.--The reasons for enacting subdivision control regulations are now widely accepted and the courts generally have upheld the exercise of this authority. A good insight into the broad aspect of planning in general was given by the court in the case of Mansfield and Swett Inc. v. West Orange, 120 N.J.L. 145, 198 Atl. 225 (1938):

> The State possesses the inherent authority--it antedates the Constitution--to resort, in the building and expansion of its community life, to such measures as may be necessary to secure the essential common material and moral needs. The public welfare is of prime importance; and the correlative restrictions upon individual rights--either person or property--are incidents of the social order, considered a negligible loss compared with the resultant advantages to the community as a whole. Planning confined to the common need is inherent in the authority to create the municipality itself. It is as old as government itself; it is of the very essence of civilized society. A

> comprehensive scheme of physical development is requisite to community efficiency and progress.[30]

Practical reasons for subdivision regulations were made clear in the comment by the New York Court of Appeals in Village of Lynbrook v. Cadoo, 252 N.Y. 308, 169 N.E. 394 (1929):

> Its purpose is to preserve through a governmental agency a uniform and harmonious development of the growth of a village and to prevent the individual from laying out streets according to his own sweet will without official approval.[31]

Administrative regulations.--Delegation of subdivision review powers by the local legislative body to the planning board is constitutional where such delegation is provided for by statute. However, there must necessarily be standards or rules of conduct to guide the planning board in its actions.[32] Enabling statutes for subdivision control commonly permits or requires the planning board to adopt subdivision regulations. These specify the procedures to be followed in submitting plats for review, information to be shown on preliminary and final drawings, and general standards for subdivision design. These regulations once adopted will govern the actions of the planning board as well as the subdivider. The board may make reasonable variations in the application of its regulations where special circumstances are present.[33]

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[30]John W. Reps, "Control of Land Subdivision By Municipal Planning Boards," Cornell Law Quarterly, 40, Winter 1955, p. 260.

[31]Loc. cit.

[32]Borough of Oakland v. Roth, 28 N.J. Super 321, 100 A. 2d 698 (1953).

[33]LaVoie v. Building Commission of Town of Trumbull, 135 Conn. 415, 65 A. 2d 165 (1949). Hilbol Realty, Inc. v. Barnhart, 205 Misc. 187, 126 N.Y. Supp. 2d 865 (Sup. Ct. Nassau County 1953).

Requirements for improvements.--The requirement that streets and utility improvements be financed by the subdivider before the municipality will accept the plat is generally upheld by the courts. However, the exact nature of the requirement must be spelled out in the subdivision regulations. In cases where this has not been done the courts have held that the subdivider is released from the responsibility of complying with the requirement.

A recent case upholding the validity of requiring improvements was rendered by the New York Court of Appeals in Brous v. Smith, 304 N.Y. 164, 106 N.E. 2d 503 (1952), where the court stated that the statute:

> . . . reflects a legislative judgement that the building up of unimproved and undeveloped areas ought to be accompanied by provision for roads and streets and other essential facilities to meet the basic needs of the new residents of the area . . . Thus, these regulations benefit both the consumer, who is protected in purchasing a building site with assurance of its usability for a suitable home, and the community at large which naturally gains greatly from the use of sound practices in land use and development.[34]

However, if subdivision regulations contain unreasonable provisions for the installation of improvements, they may be nullified by the courts. For example, the regulations questioned in Kesselring v. Wakefield Realty Company, 306 Ky. 725, 209 S.W. 2d 63 (1948), required the subdivider to install curbs and gutters. The subdivider proposed instead to use a rolled "valley gutter" which he contended in his case would serve the desired purpose as effectively as curbs and gutters. The planning commission refused to approve his plat as being in non-conformity with the established regulations. The court, in light of facts presented by expert witnesses, held for the subdivider.

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[34]Reps, op. cit., p. 267.

Requirements for reservation or dedication of sites for public use.--Requiring the installation of streets and utilities is properly regarded by the courts as essential to the public health, safety, and welfare. But there is no such judicial unanimity on the frequently encountered subdivision regulation requiring the subdivider to reserve or dedicate land for parks, schools, or other public uses.

In In Re Lake Secore Development Company, Inc., 141 Misc. 913, 252 N.Y. Supp. 809 (Sup. Ct. Westchester County 1931), the planning board had refused to approve a plat because of a failure to reserve sufficient land for recreational purposes. The statute specified that plats must show, in accordance with the comprehensive plan, a park or parks suitably located as a playground or for other recreational purposes. The court upheld the planning board's refusal to approve the plat saying: "The demand of the planning board for additional park area is reasonable. . . . It must dedicate to public use sufficient area to provide for the ultimate use to be made of this plat."[35]

The statement by the court that the subdivider must "dedicate to public use" land for parks is significant in that parks were here apparently regarded as essential as streets.

Under present enabling acts, however, the courts are not likely to uphold compulsory dedication of land for parks or other public purposes. Required reservation of lands for public use in new developments for an indefinite period of time is also doubtful. The requirement to reserve such land for a specified and relatively brief period of time, as in the recent Municipal Planning Act of the State of New Jersey (1954), specifying

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[35] Ibid., p. 269.

action must be taken by the municipality within one year, might be sustained. Obviously, this is an aspect of subdivision law which requires further study and litigation. The fact remains that the municipality must be permitted sufficient control of its own expansion, while the subdivider must be protected against arbitrary demands for public land.[36]

Refusal in public interest and welfare.--Two important decisions have been reported in cases where the municipality has refused a plat on much broader and less specific grounds than heretofore discussed. The refusal of the commission in both cases to approve a plat was based on considerations important in regulating the location and timing of new developments. However, in both cases the state statutes (New Jersey and Connecticut) did not authorize the refusal of a plat by the commission because the plat was inconsistent with the public interest. Such authority is mentioned in five states, while specific authority is granted in only three states.

In Mansfield and Swett, Inc. v. Town of West Orange, 120 N.J.L. 145, 198 Atl. 225 (1938), the planning board refused approval of a plat on the grounds, as summarized by the court:

> . . . (1) that the proposed development is not in keeping with the character of the neighborhood and would so decrease the rateables of surrounding properties as to entail financial loss to the municipality; (2) that it would effect an increase in density of population on the premises in question where none now exists and would create additional traffic hazards, particularly for school children and the fire department, and place upon the municipality the burden of additional policing and necessitate additional supervision of traffic; (3) that the proposal is contrary to the unanimous wish of practically all the property owners . . . and; (4) that approval of the plan would interfere with safety, health, and general welfare of the community.[37]

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[36] Ibid., p. 274.

[37] Loc. cit.

Here it is evident that the character of the proposed development was considered inappropriate by a majority of the property owners in the vicinity. The court was unwilling to sustain disapproval of the plat on such grounds saying: "The standard is not the advantage or detriment to particular neighboring landowners, but rather the effect upon the entire community as a social, economic, and political unit."[38] This decision may have been reversed had the evidence indicated that refusal was based upon standards for determining the overall detrimental effects of the subdivision upon the entire city rather than indicating that the subdivision was detrimental to only a particular vicinity.

A more recent decision in a similar case is that of Beach v. Planning and Zoning Commission of Town of Milford, 141 Conn. 79, 103 A. 2d 814 (1954). Here the plat which met all the requirements of the subdivision regulations was disapproved because of the additional financial burden it would place on the municipality for such services as schools, policing, and fire protection. The court rejected these reasons on the basis that these considerations were outside the scope of the planning commission's authority as set forth in the statute. The court held:

> Even if the statute had given the commission power to legislate in this regard, it would not follow that the commission could, in one isolated case and without any standards to guide it, disapprove a subdivision for a reason which it would not be required to apply to all subdivisions as to which the same reason pertained. Such action would be special legislation of the worst type.[39]

These decisions do not mean that the refusal of a plat, because it is not in the public interest or welfare, is not valid. They do make clear

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[38] Ibid., p. 275.

[39] Loc. cit.

the importance of establishing standards by which each new subdivision (and not just in "one isolated case"), would be evaluated. These standards, if sound, would eliminate the possible accusation that the planning commission was acting in an arbitrary manner in refusing to approve a plat. A positive generalization on this important issue is lacking and must await the outcome of further litigation.

Extraterritorial control.--The validity of extraterritorial control was firmly upheld in Prudential Co-op Realty Company v. Youngstown, 118 Ohio St. 204, 160 N.E. 695 (1928), where the court examined at some length the compelling practical reasons why this type of control is essential for sound metropolitan development. There is little likelihood that the exercise of extraterritorial jurisdiction would not be sustained in those states where the enabling act or charter provision is correctly drawn.

Controls based on comprehensive planning.--In most cases of subdivision control the planning agency is dealing with owners of relatively small tracts of land, these often not contiguous. The problem arises of how to develop these tracts. The planning commission often requires all subdividers to conform to the recommendations of the master plan of the area. The result hoped for and achieved in many communities is an integration of the small tracts to form a single neighborhood pattern. The acceptance of this device is so widespread that it is disturbing to learn that the legality of this practice is questioned by the courts.

The Connecticut Supreme Court in Lordship Park Association v. Town of Stratford, 137 Conn. 84, 75 A. 2d 379 (1950), failed to uphold the refusal of approval of a subdivision plat because its street pattern

differed from that shown on the general plan. The fact that the master plan of the city was entitled a "preliminary plan" (which was prepared in 1927 but not adopted until 1936), and that no evidence was available that any effort had been made to carry out this plan, was influential in this decision. Perhaps subdivision statutes should be re-examined and an attempt made to define more precisely the effect of a general plan as it applies to areas which are being subdivided.

Enforcement.--Enforcement devices in common use today are well established by the courts. The denial of the privelege of recording an unapproved plat is perhaps the oldest device. Two other methods include the prohibition of any public improvement in a street which does not appear on an approved plat and the power to deny building permits to lots having access to unapproved or unaccepted streets only. The general weakness of the above two devices is the fact that in most cases the purchaser is penalized rather than the land subdivider.

Subdivision control laws and regulations are still in their infancy. The limits of control authority are still largely undetermined. With regard to the factors of timing and location of new developments and in the light of existing judicial decisions, John W. Reps remarked:

> I don't think we should be at all hesitant about experimenting with new techniques in subdivision control. Perhaps we should even consider shifting the initiative in land planning from the land owner to the public planning agency. Above all, I don't believe that in what is really the infancy of the law of subdivision control we should worry too much about court decisions which seem narrow and short-sighted in their immediate effects.[40]

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[40] Reps, "Are Our Subdivision Control Laws Adequate?" op. cit., p. 135.

Summary

Subdivision controls as we know them are still in their infancy. This fact is evident from the analysis of the subdivision legislation of the states and the review of court cases on the subject. One of the big weaknesses in subdivision control is the small percentage of cities who even have planning agencies. Although state subdivision enabling legislation has been adopted in all the states, in some form or another, it remains scanty or too restrictive to properly or effectively control all subdivision activities.

The courts have generally upheld subdivision regulations and have recognized that a comprehensive scheme of physical development is requisite to community efficiency and progress. Although there are few decisions on subdivision controls from which to make generalizations, it is felt that actions attempting to regulate the location and timing of residential development will be upheld if they are adopted under proper enabling legislation and based upon standards applicable to the entire community. The local governments should not be hesitant in experimenting with new ways and means of controlling location and timing of new development.

CHAPTER IV

PRESENT AND PROPOSED CONTROLS RELATING TO LOCATION AND TIMING OF LAND-SUBDIVISION DEVELOPMENT

There are four basic types of government policy with respect to economic activities in land operations. Oftentimes land policies in various countries will reflect characteristics of several of these:

Acquiescence: Allowing the activities to function without either aid or interference;

Positive encouragement: encouraging building activities by positive action (i.e. housing loans, resale of municipally owned land at a discount, mortgage insurance, tax exemption, subsidies to tenants or owners, homestead loans, etc.);

Regulation: restricting or regulating the activities through planning laws, rent controls, health, sanitation, or building codes, zoning ordinances, subdivision regulations, etc.;

Direct operations: taking over activities directly (i.e. public land ownership, public building or operation of housing facilities, etc.).[41]

Foreign Land Policies

Most foreign land policies with regard to the subdivision and development of land are characteristic of both the "positive encouragement" type and "direct operations". These policies reflect in many ways

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[41] Urban Land Problems and Policies, Housing and Town and Country Planning, United Nations Bulletin 7 (New York: United Nations, 1953), p. 31.

the old landlord and tenant relationship with respect to ownership and rights in land at one time so prevalent in the old countries of Europe.

In Denmark, under special legislation, master plans are prepared which show areas ripe for urban development and in turn indicate those areas where no development may occur for at least fifteen years. Under this system compensation may be made to those whose development rights are restricted. The city of Copenhagen has a policy whereby government owned land is offered for sale or lease in competition with private enterprise when land is overly expensive because of excessive demand.

The policy of government ownership of land reserves to thwart speculation and to control development is also practiced in Austria, Finland, Greenland, and Sweden.

In Stockholm, Sweden, over 47,500 acres have been accumulated as land reserves (25,000 acres within the city limits). When the policy of government competition in land proved ineffective in curbing "improper building", a law was passed in 1948 giving the city power to forbid untimely and nonconforming development.

In England, local planning authorities have very strong executive powers. The Town and Country Planning Act of 1947 literally repealed everything preceding, which constituted almost a century of efforts to control physical environment by legislation. Later amended in 1953, the British Act has been variously hailed and damned as a precedent for American legislation.

A provision of the 1947 Act destined to have the greatest long-term effect on land development is the incorporation of a "development charge." This operates on the principle that any increase in the value of land

caused by its development is to be paid to the state in the form of a charge. No development is allowed until this payment has been made. The charge will be lowered when necessary to encourage suitable development and raised for the purpose of discouraging that which from a broad planning view is unsuitable in time, type or place. Land, however, may become building land not solely at the owner's whim, but only on permission granted by the planning authority and in accordance with a development plan for the region that is required by law to be reviewed and revised every five years and kept abreast of changing conditions and evolving theory.

Land Policies in the United States

As land policies in the United States dealing with sudivision are determined primarily through "state enabling legislation" the controls established are deemed permissible rather than obligatory. Therefore, both the "acquiescence" and "regulation" types of government land policies (outlined earlier) are characteristic of the United States.

It is an accepted principle that the ownership of land is exclusive but not absolute. Each may use his own property to the exclusion of all others, but he must use it with due respect to the limitations imposed by society. In a sense, the community retains certain rights and interests in land which are forever changing in accordance with the evolving needs of society. In the broad sense of the term, land-use is controlled at many points.

It is controlled through subdivision regulations and through zoning ordinances which are based on general land-use plans for the communities and which restrict certain uses to certain areas. Zoning also limits the area, size, height of proposed structures, and density in terms of persons or families per acre.

The above controls are generally restrictive in nature, placing limits only on how land may be used. Both zoning and subdivision controls stress negative aspects, and this presents another weakness, as no provision exists for positive development in the social interest, or for control over the amount and timing of desirable subdivision and growth.

Some of the other forms of governmental intervention affecting land-use policies are public housing, urban redevelopment, and the acquisition of land for any public purpose through the exercise of the power of eminent domain.

At present in the United States, governmental agencies may not engage in buying and selling real estate as a competitive business. Urban redevelopment and the power of eminent domain may at times approach this but there are many restrictions and qualifying factors.

Existing Subdivision Control Measures

There are few, if any, effective control measures in actual use which seek to regulate either the location or timing of development. There are, however, many devices in use by various municipalities in different states which may have some effect upon one or both these considerations. For clarity of presentation and understanding they will be classified into those measures instigated by public agencies and those through private endeavor. Those instigated by public agencies include:

Requirements for the installation of improvements;

Approval of plat by various agencies;

Elimination of the irresponsible subdivider;

Rating the plat;

Zoning and subdivision regulations.

Those instigated through private endeavors include the controls imposed by credit extension agencies.

Requirements for the Installation of Improvements

The requirements, which received general acceptance in the mid thirties, were not widely utilized until recent years. They provide that the subdivider shall install specified street and utility improvements as a prerequisite to the acceptance of the plat, or that in-lieu-of the actual improvements he shall post a bond or equivalent guarantee for the cost of installing the utilities.

A two-fold purpose is achieved by employment of this provision. First, it considerably reduces the extent of speculative platting of raw land in the hope of actual use in the dim future and in turn acts indirectly to insure that subdividing will take place in accordance with the demand for lots. It is argued that no subdivider would invest the required capital unless he felt certain that the demand would result in early utilization of the subdivision and its utilities. Second, it strikes at and offers a solution to one of the prime sources of city loss in subdivisions of the past, namely the installation by the city of utilities for scattered groups of houses.

The earliest recorded mention of a municipality requiring that improvements be financed by the subdivider, to the author's knowledge, was in Lakewood, Ohio. In 1914, at the request of the city engineer, E. A. Fisher, the city ruled that no allotments would be accepted which did not have sewers, water lines, sidewalks, and graded streets built and paid for by the subdivider. It was pointed out that, during the depression when

many cities were bankrupt due to an inability to meet their obligations on special assessment bonds, Lakewood, Ohio, was free from such debt.

A survey conducted in 1955 by the Urban Land Institute revealed that the majority of cities and counties employing subdivision regulations do require the subdivider to install the necessary improvements or post a bond in-lieu-thereof. A comparison with a similar survey conducted five years earlier clearly indicates that this provision is rapidly becoming accepted as a device for controlling subdivision activity and securing the improvements needed as land is developed for urban use.[42]

Although subdivision regulations frequently impose a financial hardship on the developer of land by requiring excessive improvements, the requiring of improvements has eliminated to a great degree the marketing of unwarranted subdivisions and the operations of the fly-by-night subdivider. However, since the widespread incorporation of these provisions there has been no serious economic depression or subdivision crisis which would test the success of this control measure in abating excessive land subdivision. The belief has been expressed that excessive subdividing, while somewhat abated, will continue, especially in boom periods.[43]

In addition to and in connection with the elements of location and timing embodied in the improvement requirement, a few municipalities spell out additional provisions which have a direct effect on location and timing.

Both Montgomery, Alabama and Augusta, Georgia, require (where public sanitary sewer is not reasonably accessible, but where the plans for the

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[42]Urban Land Institute, Utilities and Facilities For New Residential Development, Technical Bulletin No. 27 (Washington: Urban Land Institute, 1955), 100 p.

[43]"An Analysis of Subdivision Control Legislation," op. cit., p. 555.

sanitary sewer system of the district in which the subdivision is located have been prepared) the subdivider to install sewers in conformity with such plans, although a connection with an existing main may not be immediately practicable. In such cases, and until such connection is made with the sewer system of the district, the subdivider is required to provide for the disposal of sanitary sewage by a type of treatment to be approved by the State Department of Health.

A provision in the Subdivision and Platting Regulations of Park Ridge, Illinois, requires the subdivider to make a cash allowance for school improvements to serve the new development. The subdivider is required to pay at or prior to the approval of a plat, $300 per lot to the city in a special marked fund bearing the name of the subdivision, to be used by the consolidated school system for improvements necessary to serve the subdivision. If within a five-year limit the school constructs a building or addition within a three-quarter mile radius of the new subdivision, the city will appropriate said fund to the school board. If no action has been taken in this time, the fund is returned to the subdivider.

It is evident from the above discussion and in light of the selected provisions presented that the "installation provision" has a direct effect upon location and timing of developments. This device, however, still falls short of an effective regulation over location and timing essential to a well coordinated plan of community development. The use of this control by a city possessing inadequate subdivision control jurisdiction may only tend to aggravate the problem by encouraging development in those areas beyond the jurisdiction.

Approval of Plat by Various Agencies

The primary function of an approval procedure, if interpreted solely through the stated intent of the majority of the cities and counties, is merely to review proposed plats and check to see that all the requirements set forth in the subdivision regulations which apply to the particular subdivision have been met. In some cases this procedure is regarded as one of the most important steps in subdivision regulation and control and much use is made of it.

In many instances, proposed developments are refused approval for various reasons. Predominant among these is the finding that an area is subject to flooding, has insufficient water supply, has soil conditions not adaptable to the satisfactory disposal of sewage, has topography too steep requiring street grades in excess of a specified percentage, or for other similar physical reasons cannot meet the standards established by these agencies as minimum conditions for healthful living.

An extremely important function and service that the planning commission is in the position to render, and does in an increasing number of cases, is to offer advice to the subdivider during a pre-preliminary plat stage and in some cases even before a site has been selected. This voluntary advisory service often acts as a better control of location and timing than do regulatory provisions. The lasting effects of this educational process with respect to land investment (when to buy, where to buy, and principles of good subdivision design) can be measured only by an evaluation of the quality of product being produced. To offer effective advice requires both a thorough understanding of all factors concerned and the position of the subdivider.

Decisions affecting both location and timing of a development can be aided by such agencies as the Board of Education, Fire Department, Police Department, and Park and Recreation Department, which represent services vital to a new residential development. These agencies are in position to give expert judgement on the effects a proposed development will have upon their operations and activities. Of the over 200 subdivision regulations reviewed, in only six cases was any evidence found that the Fire Department is consulted, in only four cases is mention made of the Board of Education, and in only three is reference made to a review by the Police Department.

In some states, proposed subdivisions may be refused by the planning commission on grounds that it would be against the public interest and welfare to permit the subdivider to proceed with a proposed development. An instance of a public interest statute being employed to prohibit subdivision occurred in King County, Washington, which had set forth "principles of acceptability" to which subdividers must conform. The Planning Board refused to approve a plat because the land was of such low value that the tax receipts would not cover the cost of public utilities and the county could not afford to improve the streets. Although the wording of this regulation seemed to permit withholding of approval from all proposed subdivisions not in the public interest, this is the only case recorded in which refusal was denied on this basis.[44]

Although not extensively utilized, the consideration of public interest in the approval or rejection of plats has great promise as a means of regulating location and timing of land subdivision.

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[44] "An Analysis of Subdivision Control Legislation," op. cit., p. 560.

Elimination of the Irresponsible Subdivider

Measures have been enacted in Arizona and California to eliminate the irresponsible subdivider. The statutes provide that lands to be subdivided shall be registered with a state agency (together with the required necessary data) before being offered for sale. Both the subdivider and land to be subdivided are then checked by the state. These practices are being used effectively to reduce fraudulent practices within the industry and to raise the standards of the subdivision business. Such actions as this and provisions requiring that clear title be given are steps in the right direction toward providing the ground work for control measures regulating the location and timing of new subdivision activity.[45]

Rating the Plat

To only a limited extent have cities required that all pertinent facts concerning land to be sold be made available as a public record to the purchaser. There are various ways of doing this.

The Santa Barbara Planning Commission not only checks and approves plats but submits a report analyzing the qualities of the subdivision and giving it a rating in accordance with the following system:

Class A plats are those that reflect an honest desire to give lot purchasers full value for their money. Such plats are distinctly superior in every item by which such work may be judged.

Class B plats are those somewhat deficient in certain particulars, but not to the extent that they cannot be approved.

Class C plats are those that barely meet the minimum requirements.

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[45] Ibid., p. 567.

Class D plats are those disapproved by the Planning Commission. The reasons for disapproval and the steps which the subdivider may follow to remedy an unsatisfactory situation are indicated.[46]

No indication was made that this information must be shown to the buyer by the land developer. However, knowledge of such a rating would be widely known through advertisements by those developers whose plats received the highest rating.

A provision could be adopted which would require that the planning commission rate all individual lots. All legal papers used in a lot transaction would be required to indicate this rating. Lots would be rated A, B, C, etc. according to standards of accessibility, possession of municipal and public utilities, nearness to a developed neighborhood, schools, shopping, etc. The factors and standards requiring consideration in controlling location and timing could be applied and reflected in the rating.[47]

Zoning and Subdivision Regulations

Zoning and subdivision regulations may be used together to control location and timing. Under this system land considered presently unsuitable for residential development on the basis of location and timing factors could be reserved by zoning it for agriculture, estates, recreation, or similar low intensity uses. When the area becomes ripe for a higher intensity of use, i.e. residential, the zoning classification could be changed to permit this. For example, the estate district could require a minimum lot size of five acres. Even if this land is prematurely

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[46] Planning Problems of Town, City and Region, op. cit., p. 28.

[47] Helen Corbin Monchow, Seventy Years of Real Estate Subdividing in the Region of Chicago (Chicago: Northwestern University, 1939), p. 188.

developed, ownership will still remain in large parcels. If the demand for additional available sites becomes great this area would still be suitable for furthur development.

For this method to be effective in controlling location and timing, it is necessary that assessed valuations be commensurate with the use permitted in the zoning district in which the land is located. If this is not the case, high assessments will force rezoning earlier than location and timing factors dictate.

The main reason zoning has not been used more often as a device in controlling location and timing is due to its restricted jurisdiction in most communities. Unlike the land-subdivision jurisdiction which extends up to six miles beyond the city limits, zoning powers in most communities are restricted to the city limits. It is evident that unless the city has extraterritorial zoning powers, zoning will not be effective in controlling land subdivision. Therefore, to effectively control location and timing by this method requires zoning jurisdiction over the entire metropolitan area.

Different situations may present different approaches to the problem. The subdivision regulations of Martinsville, Virginia, state that no plat within the three-mile jurisdiction will be approved by the planning commission until such land has been zoned. As the county in which the jurisdiction extends has no zoning, land developers must either subdivide available land within the city or get the city to annex land and zone it before their plats will be given consideration. This could prove to be an excellent means of controlling not only location but also timing of new developments. One drawback of this method is the freedom of the subdivider to undertake

new developments beyond the three-mile limit. The importance of this shortcoming would depend largely on the extent of urbanization in the fringe areas, and on the highway facilities.

Other means of incorporating zoning to regulate subdivision activity are found in the Sands Point, New York, Ordinance. This ordinance defines a land subdivision as a business use, allowed only in residential districts on special permit. In connection with its review of each subdivision, the planning commission is required to make a finding as to the village's capacity to absorb the proposed new lots. If the subdivision is approved, a limitation on the number of building permits which may be issued in any one year may accompany the plat. The planning board may require the building activity to extend over a five-year period.[48]

Private Control by Credit Extension Agencies

The ability of the land developer to subdivide and build homes depends in most cases upon his ability to obtain adequate financing. For a long time it has been recognized that an effective means of controlling subdivision activity would be to obtain the cooperation of credit extension agencies. Only since the establishment of the Federal Housing Administration (FHA) in 1934 has this theory been realized, and only in recent years on a large and expanding scale.

The FHA land policy on the whole has been a good and important force accepted readily by the builder as it made allowance for quick and easy settlement terms. The banks and insurance companies have in the past found the FHA mortgages good investments because of the insurance coverage

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[48]Fagin, op. cit., p. 302.

of possible losses. The consumer often desires FHA housing since it extends some protection against shoddy construction.

Considerations of proper location and timing of new developments are evident in a review of the three principles on which FHA bases its recommendations as an advisory agency and its requirements as a lending agency:

> (1) that the development of urban land should create neighborhoods of definite character; (2) that such neighborhoods must be in proper relationship to a reasonable consideration of the manner and extent of the expansion of the community as a whole; (3) that such neighborhoods should be designed to meet a demand for a definite type of housing accommodation within the community.[49]

The year after these principles of evaluation were adopted by the FHA (1938) more than 800 subdivisions out of a total of 927 submitted for approval were rejected. This indicated the extent of poor subdivision activity taking place previous to the control.[50]

When the municipality or county requires the subdivider to install improvements, he will often make use of a "performance bond" guarantee. Recently the bonding companies have become concerned about the timing of new developments and their relationship to the needs and demands for new housing. In certain areas of the country a saturation of housing is evident. Companies are not bonding improvements in these areas. This reaction appears to be a very desirable one. In a sense, it is an automatic functioning of the economic system to slow down development as the market for lots becomes more speculative.

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[49] Federal Housing Authority, Subdivision Standards for the Insurance of Mortgages on Properties Located in Undeveloped Subdivisions, Circular 5 (Washington: United States Government Printing Office, June 1, 1937), p. 1.

[50] "Arithmetic of Land Development," The Architectural Forum, 70, May 1939, p. 367.

Banks and other lending institutions are following the example of FHA and the bonding companies in an attempt to insure both a sound investment for themselves and the community in which they operate. There is a growing recognition among these credit extension agencies of the advantages of sound planning and a greater appreciation and awareness of the forces that create and support land values.

Proposed Methods of Control

Establishment of a Regional Government

The problem of overlapping jurisdictions still remains the big obstacle to be solved or remedied before effective methods for controlling either location or timing of new subdivisions can be realized. In addition to the necessity of planning for location and timing on a regional basis, it is important that a proper jurisdiction be established to prevent possible evasion of controls by developing in another area which is not subject to control but is a part of the region. The ultimate solution to the problem of complete extraterritorial control will probably have to come through the establishment of a new political unit or cooperation between existing ones. However it may be achieved, control on a metropolitan basis is the only completely satisfactory solution to the problem.

The plan of action which shows greatest promise is that of consolidation of cities or of cities and counties into a metropolitan government which would have authority over land subdivision policies of the entire region. There are at least five different plans for the consolidation of an area. They are referred to as the Decentralization Plan, the Federal Plan, the Metropolitan County, the Greater County, and City-County

Consolidation.[51] The City of Miami, Florida, and its region have recently published a report outlining a proposed plan of consolidation. This plan is a combination of principles embodied in several of the basic five mentioned above.[52]

The establishment of a metropolitan area planning commission similar to the Tulsa and Tulsa County, Oklahoma, Metropolitan Planning Commission is a more popular and feasible solution to this problem. By creating a central planning commission and giving it necessary jurisdiction and power, irritations caused by differing requirements are eliminated. Under this setup, effective controls geared to the region and affecting the entire locality may be instigated. Other metropolitan area planning commissions, such as those operating in Atlanta, Cleveland, and Detroit are mainly advisory or coordinating agencies for the many phases of planning.

Once planning has been established on a metropolitan basis, there are five land-subdivision control methods, varying in degree of severity, that might be used to regulate the location and timing of new developments. They are: public interest and welfare provisions; taxation policies; zones of building priority; "certificate of convenience and necessity"; and municipal ownership of land.

Public interest and welfare provisions.--Consideration of public interest and welfare is not a new concept nor can it be considered as pure theory. Reference was made to this earlier under "Approval of Plat by Various

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[51]James E. Pate, Local Government and Administration (New York: American Book Company, 1954), p. 113-132.

[52]Public Administration Service, The Government of Metropolitan Miami (Chicago: Public Administration Service, 1954), 194 p.

Agencies" and in Chapter III in the analysis of this provision as it appears in subdivision legislation. Essentially this provision would permit the city to deny a plat when it could be shown that the development would result in avoidable and unnecessary, direct or indirect losses to the city. All indications reveal this approach of controlling new subdivision developments has great possibilities even though it is still in the embryonic stage. Prerequisite to the successful use of this means is the establishment of standards applicable to the entire region and based upon a comprehensive master plan of the entire region, whereby the planning agency in exercising judgment upon premature subdividing or poor location will not be acting in an arbitrary manner.

Taxation policies.--Taxation is frequently mentioned as a means of controlling subdivision activity. Many proposals have been offered, the details of which are not necessary to mention here. Essentially all proposals operate on the fluctuating assessment basis either to encourage or discourage development. Regulatory taxation is considered defensible when it promotes the general welfare, when it is the best means of achieving the objective sought, and when the resulting social gains exceed the loss in revenues which it causes. Control through taxation is not, however, a precise tool, as this method would merely provide an incentive to either hold or develop vacant land. This is not a strong device for the insurance of an effective control over location and timing. It is usually agreed that taxation should remain a fiscal instrument and not be relied upon to control land development.

Coordination of other control devices with taxing and assessing machinery does, however, appear to offer better possibilities for

constructive action in controlling location and timing of new developments. Reference was made earlier to a coordinated scheme of zoning, subdivision controls, and tax assessing to achieve this.

Zones of building priority.--A comparatively old theory with new adaptations is the proposal to zone outlying areas in belts about the central city, and to prohibit platting in an outer zone until a certain percentage of the next inner zone has been developed.

An adaptation of this is the suggestion to establish building districts as an overlay on the zoning map to be referred to as "zones of building priority," which would be used as a guide in controlling both location and timing of new developments. The delineation of these zones would be based upon the location and timing most advantageous to the municipality for economizing on municipal costs, for securing the desired character of development, and for satisfying the calculated demand for housing. These "zones" would be assigned a priority based upon factors affecting location and timing. Control would be accomplished by issuing building permits only in those areas indicated on the map as first priority. The number of permits available from time to time would be dependent upon the calculated demand for housing.

It is recognized that a municipality acting under this system of regulating subdivision activity should be obliged by statute to carry forward programs of municipal facility and service expansion related to development trends so as not to block the utilization of land but to expedite it in an orderly fashion. If a developer desires to improve the building priority on his land by supplying the needed off-site facilities

and services, this would be his prerogative.[53] The Town of Milford, Connecticut, is presently engaged in instituting a program very similar to this.

This method of control presents many problems of administration, and in turn raises many questions as to its actual effectiveness. In any case, it represents one feasible method of approach from which to branch off for experimentation.

Certificate of convenience and necessity.--Another proposal is to require a land subdivider or developer to first obtain a "certificate of convenience and necessity" before he proceeds to develop land. Under this scheme, all land would be invested with a public utility status. Permits to subdivide and sell would be available only when there is a demonstrated need for additional building sites and only on the condition of proper land planning. This proposal is based upon the assumption that subdividing activities are vested with a public interest. This is closely associated with the "public welfare and interest" controls mentioned above.

The tests applied by the courts to determine public utility status are: (1) is the commodity or service involved essential; is the public "peculiarly dependent" upon it; (2) would the government feel it a duty to furnish the commodity or service if private enterprise failed to do so; and (3) is the market monopolized or does relatively free competition reign? The answer to these qualifying queries has led to the conclusion that land subdividing could be placed in a sort of "twilight zone" between a clear-cut public utility and an out-and-out private business--with the

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[53] Fagin, op. cit., p. 303.

trend apparently toward constantly closer identification of land subdivision with public utility operation.[54] Therefore, it appears that it is only a matter of time until land subdivision will be classified as a public utility operation.

Frank B. Williams in an article entitled, "Certificate of Convenience and Necessity for Real Estate Subdivision," states:

> It would almost seem that nowadays public utility is any activity which in the opinion of the judges, might, in the public interest, be regulated as such. And it is by no means all monopolies or natural resources which the judges will regulate as such.[55]

Municipal ownership of land.--The proposal to control land subdivision through government ownership is indeed severe. However, municipal ownership has been acclaimed by many as being not only the most direct method of control but the one that presents the only guarantee of efficient and economical city growth. Although this practice is not new to many European cities, it is seriously doubted that municipal ownership of land will ever be used extensively in the United States. The primary reason for this doubt is the lingering laissez-faire philosophy inherent in our culture which would resist drastic modifications of property owners' rights.

Municipal ownership of land has strong advocates. Among the most forthright of them in past years was Dr. James Ford, who says in his Slums and Housing:

> Extension of public ownership of land is necessary to avoid recurrence of the evils of exploitation of land against the public interest and to give the government a firm control of the housing situation. Land is a proper field for public ownership. Management of land is chiefly a legal rather than a business problem.

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[54] Monchow, op. cit., p. 172.

[55] Frank B. Williams, "Certificate of Convenience and Necessity For Real Estate Subdivision," The American City, 59, November 1944, p. 111.

> It is a type of business that government could handle efficiently. Accounting is simple. Public interest is paramount. Government ownership is better . . . because it eliminates the pressure of selfish interests and ultimately it does away with the incentive to speculation, jockeying, and corruption, which are against the public interest.[56]

Two approaches to municipal ownership of land are possible: (1) land purchased by the government as a reserve to remain in long-term holdings; (2) land purchased by the government only for immediate use and to serve a particular purpose. Neither advocate one-hundred per cent public ownership as land already satisfactorily developed and privately owned would not be purchased.

In approach (1), public acquisition would be concerned only with the undeveloped and the poorly platted and developed lands which are a social and economic burden on the community. The same intent and policies presently practiced in Stockholm, Sweden (reviewed in Chapter I) would be incorporated in this approach. The city would purchase a large quantity of land which would be held in reserve by the city to be leased when expansion demands warrant, or to thwart speculation of privately owned lands. Through an extensive land reserve and a policy of continued municipal ownership through leasing of the land, factors of location and timing could be controlled very effectively.

Charles Abrams in his book, The Future of Housing, sets forth approach (2) by proposing the city purchase and develop land for residential uses.[57] The advantages of this operation from the standpoint of

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[56] Dr. James Ford, Slums and Housing, Vol. II (Cambridge: Harvard University Press, 1936), p. 841.

[57] Charles Abrams, The Future of Housing (New York and London: Harper and Brothers, 1946), p. 365-367.

controlling location and timing would be enormous. First, the city would be able to determine where development should best take place instead of regulating developments and hoping that they will occur where they should. Second, the city would be able to supply the demands of the market more effectively, particularly in periods of shortage. Third, the city would be able to establish a "yardstick" whereby the private land developer may observe the benefits of proper timing and location.

As neither approach (land purchased by the government as a reserve to remain in long-term holdings or land purchased only for immediate use to serve a particular purpose) advocates complete municipal ownership, it will be necessary to supplement this with other regulations if location and timing are to be controlled effectively.

Problems

An attempt to regulate location and timing will probably reveal many problems which will have to be worked out by the local government. Problems may arise as the result of poor or faulty public administration. For example, the city or county may refuse to provide or be slow in providing the necessary services and facilities to keep pace with the market demand for new housing. Under location and timing controls it is possible for the city to intentionally slow down development. This would enable it to catch up with the necessary services and facilities in addition to directing development to provide for more economical means of supplying these facilities. However, this prerogative should be exercised with caution.

A problem may also arise over the issuance of building permits on an equitable basis to subdividers as determined by the housing demand. There may be instances in which one or two subdividers are monopolizing

the activity by platting the entire annual allotment. One solution to this problem would be to limit any one subdivider to not more than a certain percentage of the annual quota. All building permits issued would be subject to a time limit.

A problem of inflationary land prices may arise as a result of the creation of a public monopoly of land ownership. This could occur when there is only a limited quantity of land which is suitable (as determined by location and timing considerations) for subdividing purposes. The city should take precautions to see that this situation does not arise.

These are only a few of the more serious problems connected with location and timing of development. Others will reveal themselves upon further study and actual employment of various means of control.

Summary

Many measures are in use today in this country for controlling the location and timing of new developments. Two of the most widely used include the requirements for installation of improvements and the review of proposed plats by various agencies to see if the topography is suitable for development and in some cases to check on the ability of the city to furnish the proposed development with services and facilities. Others which are in use include the combination of subdivision control and zoning, a device of rating all plats on the basis of their desirability for residential purposes, and an arrangement under which subdividers are licensed or registered. Private lending agencies (in the interest of sound investments) are proving instrumental in regulating to a degree both the location and timing of new subdivision activity. None of these controls, however, is in itself sufficient to solve the problem.

It is recognized that jurisdiction throughout the entire metropolitan area is necessary for adequate control of subdivision activity. Once the proper jurisdiction has been established, any one or a combination of proposed control measures aimed at regulating the location and timing of developments may be adopted. These vary in degree and severity, representing in some cases extreme but effective solutions. They include: first, the use of public interest and welfare provisions; second, the use of taxation policies to encourage or discourage development of certain acreages; third, the establishment of building priorities which designate the land suitable for residential development and indicate, by quota, permissible subdivision activity over any given period of time; fourth, the establishment of land as a public utility and the requirement of a "certificate of convenience and necessity" before subdividing; and fifth, municipal ownership of land, such as the purchase of land as a reserve remaining in long-term holdings, and the purchase of land for immediate use to serve a particular purpose.

These proposed measures for controlling the location and timing of residential subdivision are by no means the answer to every problem concerned with city growth. Each proposal mentioned provides fertile ground for additional research. The need for control over subdivision activity is widely recognized. There is no one solution or method of attack that would be effective in all cities. It remains for each region to take inventory, decide upon the proper approaches, establish standards, and execute the plans.

CHAPTER V

RECOMMENDATIONS

The control of location and timing of residential development is a prerequisite to orderly city growth. The primary benefits to be achieved by these controls are the ability to provide municipal facilities and services to all new residential developments in the most economical manner and to prevent excessive subdivision.

It is recommended that all cities desiring to control location and timing of residential development begin by first preparing a "plan of expansion" for the metropolitan area. Such a plan would serve as a guide in controlling subdivision activity. The plan would include a map and a text. Each agency concerned, including the planning commission, the utility commission, parks and recreation department, school board, and public improvements department, would be required to help formulate this plan. After taking inventory of facilities and considering their immediate plans for improvements, each agency would indicate (by outlining areas on a map showing existing and proposed residential areas as established in the comprehensive master plan for the city) their ability to serve additional units in the future. Accompanying this map would be a report describing each area delineated, its existing and proposed facilities, and the quota of new residential homes each agency would be able to serve in the ensuing years. For example, the school board, in light of existing enrollments and existing and anticipated improvements, could easily calculate the number of additional children a particular school can accomodate

in the following year. By taking the number of school age children per family and families per acre, an area can quickly be delineated, indicating the school's ability to absorb new development.

Each of the individual maps prepared by the various agencies would then be overlayed to form the master map in the overall plan for residential expansion of the metropolitan area. Areas indicated on the map by all agencies as being ripe for expansion in the next year would receive a first priority rating and be assigned a maximum quota, based upon the individual reports. Those areas indicated as being deficient in only one facility or service in the next year would receive a second priority, etc. The accompanying text would explain the purpose and function of the plan and would be a synthesis of all reports submitted. In addition to serving as a guide for controlling subdivision, the map with its priorities would serve as an excellent means of coordinating improvement programs of each of the agencies involved. The plan should be revised annually.

Once the map showing areas ripe for expansion has been prepared, based on the communities' ability to furnish the necessary facilities, the next step would be to establish the yearly quota of residential construction permissible for the entire metropolitan area. This would be determined through studies and surveys (as discussed in Chapter II) establishing the demand for residential lots, and the criteria qualifying land for development.

A most important step in the successful operation of any scheme controlling location and timing, and one often overlooked or disregarded, is a well devised and executed program of education. The effectiveness of the entire control program will hinge upon the effectiveness of education.

It is important that all citizens (especially subdividers, land developers, and real estate salesmen) understand the intent and reasoning for such a control program and its benefits. It is even more desirable, if possible, to solicit the support of the building industry and others concerned at the very outset of a program designed to control location and timing.

There are three recommended methods for carrying out the "plan of expansion." First is the combined use of both zoning and subdivision control. The effectiveness of this device, as pointed out earlier, will depend on sufficient jurisdiction of both zoning and subdivision control. Essentially, this would zone (depending on the priority) the unripe vacant land for a less intensive use than that profitable for residential development and rezone when location and timing factors warrant (when the area assumes a higher priority). This zoning plus subdivision regulations which prohibit the developing of unsuitable land, could control very effectively location and timing of land subdivisions.

Second, location and timing may be controlled by adherence to an officially adopted utility improvements program. A well devised and executed utility expansion program based on both the comprehensive master plan for the city and the subsidiary "plan of expansion" could prove effective. Under this program the city could refuse to supply utilities to proposed subdivisions which are not within the first priority area. Exceptions should be made in those cases where the inadequacies in facilities are such that the developer is willing to eliminate them at his own expense and thereby speed up his opportunity to develop.

Third, the "plan of expansion" could be carried out under the mutual cooperation of all the agencies within the metropolitan area

concerned with location and timing of development. Through this cooperation, controls such as the combination of subdivision and zoning (mentioned above) could be employed effectively.

Further means of control can be realized under adequate legislation. It is recommended that cities and counties press for better legislation which will (1) provide adequate jurisdictional control and, (2) extend the power to the municipality to deny a plat which is not in the public interest or does not promote the general welfare. Three states, (Pennsylvania, Wisconsin, and Washington), already possess these powers.

With the proper legislation a subdivision ordinance composed of a map and text (similar to the "plan of expansion" mentioned earlier) could be officially adopted by the city. The map would set forth priority areas while the text would establish quotas and standards based on each agency's requirements and would include recommendations as well as the requirements established by the existing subdivision regulations. The subdivision ordinance would require an amendment yearly to revise the areas and quotas.

Under this system, the approval of a plat can be centralized in a single agency for convenience and efficiency. It is recommended that this operation be performed by the office of the building inspector, thereby relieving the planning commission of this administrative responsibility. Before a plat could be approved the site would have to be located in the first priority area shown on the map and would have to meet the location and timing requirements of the text in addition to fulfilling the requirements of the zoning ordinance. Under legislation permitting the denial of a plat not in the public interest and welfare, a plat not in accordance with the "plan of expansion" could be denied.

The preceding are only a few possible actions which may be used to control location and timing of development. However, there are certain precautions to be borne in mind, some of which are set forth by Philip P. Green, Jr., who points out that in the use of location and timing regulations:

> . . . it cannot be stressed too strongly that this type of regulation should not be rushed into in a half-backed fashion. As in the case of every new regulatory technique, it is important that the first cases to reach the courts be carefully thought out. In order to achieve the highest possibility of success there should be adequate statutory backing for whatever is done, adequate standards in the ordinance to guide administrative decisions, and honest and fair administration. Some of these matters can be handled by the lawyers but most depend upon competent research and plan making by the planners. The strongest support that can be raised in any case of this type is a demonstration that use of the technique is based upon a sound, comprehensive plan. If you have done your job as planners, the lawyer will have a relatively easy time.[58]

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[58]Philip P. Green, Jr., "Development Timing," Planning 1955 (Chicago: American Society of Planning Officials, 1956), p. 87.

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